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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JEFF A. ODEGAARD,

11 Plaintiff,

12 v.

13 VCA CROWN HILL ANIMAL
14 HOSPITAL,

15 Defendant.

CASE NO. C09-0740JLR

ORDER GRANTING MOTION
FOR RELIEF UNDER RULE
60(B)(1) AND (6)

16 **I. INTRODUCTION**

17 This matter comes before the court on Plaintiff Jeff A. Odegaard's "Response on
18 Motion to Dismiss, Request to Reconsider" (Dkt. # 29). Mr. Odegaard requests that the
19 court rescind its order and judgment dismissing this action. Having considered the
20 motion, as well as all papers filed in support and opposition, and deeming oral argument
21 unnecessary, the court GRANTS the motion (Dkt. # 29) pursuant to Federal Rule of Civil
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1 Procedure 60(b)(1) and (6) and VACATES its order and judgment dismissing this action
2 (Dkt. ## 26, 28).

3 II. BACKGROUND

4 The present motion arrives in the wake of the court's dismissal of this action for
5 want of prosecution on the part of Mr. Odegaard. (*See* Order Granting Mot. to Dismiss
6 (Dkt. # 26).) As the parties are familiar with the background of this case, the court will
7 not repeat it in full here.

8 On May 27, 2008, Mr. Odegaard, proceeding *pro se*, filed a complaint against
9 Defendant VCA Crown Hill Animal Hospital ("VCA Animal Hospital") alleging
10 employment discrimination in violation of the Americans with Disabilities Act. (*See*
11 Compl. (Dkt. # 1).) On December 23, 2009, VCA Animal Hospital filed a motion to
12 compel discovery after Mr. Odegaard stopped participating meaningfully in the discovery
13 process. (Dkt. # 11.) Mr. Odegaard did not file a response to the motion to compel. On
14 January 8, 2010, the court held a hearing on the motion to compel. (Dkt. # 16.) Mr.
15 Odegaard did not attend the hearing. (*Id.*) The court granted the motion to compel;
16 ordered Mr. Odegaard to complete his responses to VCA Animal Hospital's first set of
17 interrogatories by January 15, 2010; and authorized VCA Animal Hospital to file a
18 motion to dismiss if Mr. Odegaard did not comply with these discovery deadlines. (*Id.*)
19 Mr. Odegaard did not file his interrogatory responses. On January 15, 2010, VCA
20 Animal Hospital filed a motion to dismiss for want of prosecution. (Dkt. # 20.) Mr.
21 Odegaard did not respond to the motion to dismiss. On January 25, 2010, the court
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1 granted the motion to dismiss (Dkt. # 26), dismissed this action for want of prosecution
2 (*id.*), and entered judgment (Dkt. # 28).

3 On March 31, 2010, Mr. Odegaard filed the present motion, requesting that the
4 court reconsider its dismissal of this action. (Dkt. # 29.) The court directed VCA Animal
5 Hospital to file a response to Mr. Odegaard's motion under the legal standard of Rule
6 60(b). (Dkt. # 30.)

7 **III. ANALYSIS**

8 **A. Motion for Reconsideration**

9 A motion for reconsideration must be filed within 14 days after the order to which
10 it relates is filed. Local Rules W.D. Wash. CR 7(h)(2). Here, Mr. Odegaard's motion is
11 untimely to the extent it is treated as a motion for reconsideration. The court granted
12 VCA Animal Hospital's motion to dismiss and entered judgment on January 25, 2010.
13 Mr. Odegaard did not file the present motion until March 31, 2010, which is substantially
14 beyond the 14-day window specified in Local Rule CR 7(h)(2). Therefore, because the
15 motion was not filed within 14 days, the court DENIES the motion to the extent it seeks
16 relief under Local Rule CR 7(h).

17 **B. Motion to Vacate**

18 The court will also construe Mr. Odegaard's motion as a motion for relief under
19 Rule 60(b)(1) and (6) as he seeks relief from the court's order dismissing his case and the
20 resulting judgment. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.
21 1990) (*pro se* pleadings and briefs are liberally construed). Rule 60(b) provides that the
22 court may relieve a party from a final judgment or order for "mistake, inadvertence,

1 surprise, or excusable neglect” or “any other reason that justifies relief.” Fed. R. Civ. P.
2 60(b)(1) & (6).

3 1. Excusable Neglect

4 “Excusable neglect ‘encompass[es] situations in which the failure to comply with
5 a filing deadline is attributable to negligence,’ and includes ‘omissions caused by
6 carelessness.’” *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (quoting
7 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 388, 394 (1993)). The
8 court’s determination is an equitable one based on the totality of the circumstances. *Id.*
9 To determine when neglect is excusable, the court must follow the equitable analysis
10 specified by the Supreme Court in *Pioneer* by examining four non-exclusive factors: (1)
11 the danger of prejudice to the opposing party; (2) the length of the delay and its potential
12 impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted
13 in good faith. *Id.*; see *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir.
14 1997).

15 First, the court finds that VCA Animal Hospital would likely suffer some
16 prejudice if the court grants Mr. Odegaard’s motion because it would have to
17 recommence litigating this case at additional expense and after a delay of several months.
18 The court declines, however, to consider the merits of VCA Animal Hospital’s contention
19 that it would be particularly prejudiced on the theory that Mr. Odegaard’s claims are
20 time-barred. See 42 U.S.C. § 2000e-5(f)(1); *Nelmida v. Shelly Eurocars, Inc.*, 112 F.3d
21 380, 383 (9th Cir. 1997). This argument may prove meritorious in due course, but the
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1 court will not evaluate it in the context of the present motion without the benefit of
2 responsive briefing from Mr. Odegaard.¹ This factor weighs against granting the motion.

3 Second, the court finds that the length of delay and its potential effect on the
4 proceedings is meaningful, although not substantial. Mr. Odegaard filed the present
5 motion over two months after the court dismissed this action. Two months is not an
6 egregious delay, and it is within the one-year window of Rule 60(c). Nevertheless, the
7 court is mindful that Mr. Odegaard essentially ceased participating in this action in late
8 2009. Granting Mr. Odegaard's motion would require the reopening of discovery, a
9 continuance of the original trial date of June 1, 2010, and extensions of numerous pre-
10 trial deadlines. This factor also weighs against granting the motion.

11 Third, the court finds that Mr. Odegaard has presented a sound reason for his
12 delay, *i.e.*, that he suffered from the adverse effects of bipolar disorder during December
13 2009 and January 2010. (Mot. at 1.) Specifically, Mr. Odegaard explains that he was
14 "mentally unstable" and "full blown manic" in December 2009, and that he was
15 involuntarily hospitalized in December 2009 and part of January 2010. (*Id.*) In support
16 of this explanation, Mr. Odegaard submits a copy of a December 30, 2009 order of the
17 King County Superior Court committing him for involuntary treatment. (*Id.* at 3.) The
18 order places Mr. Odegaard on less restrictive treatment and provides that he shall reside
19 at a specific address, take all medications as prescribed, and comply with other
20 requirements for a period not to exceed 90 days. (*Id.* at 4.) The court notes that it

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22 ¹ VCA Animal Hospital may, of course, file a motion raising this argument or others, if appropriate.

1 possesses no expertise regarding bipolar disorder. It appears plain, however, that Mr.
2 Odegaard's communications with counsel for VCA Animal Hospital in December 2009
3 and January 2010 were increasingly erratic and troubling. This would seem to confirm
4 Mr. Odegaard's explanation for his failure to participate constructively in this litigation
5 and suggests that he was not in a position to respond to VCA Animal Hospital's motion
6 and the court's orders in an appropriate manner at that time. Furthermore, although VCA
7 Animal Hospital correctly notes that Mr. Odegaard communicated with counsel for VCA
8 Animal Hospital by email in January 2010, the court is not persuaded that these
9 communications demonstrate that he has not shown a sound reason for delay. This factor
10 weighs heavily in Mr. Odegaard's favor.

11 Fourth, the court has little means to evaluate whether Mr. Odegaard has acted in
12 good faith. The court agrees with VCA Animal Hospital that Mr. Odegaard's actions
13 throughout the course of this lawsuit—such as his failure to respond to discovery
14 requests, his failure to appear at a scheduled hearing, and his failure to notify the court
15 about his unavailability—suggest that Mr. Odegaard may have acted in bad faith on
16 occasion. Nevertheless, the court is not in a position to accurately assess which of Mr.
17 Odegaard's actions may have been affected by his bipolar disorder. This factor thus
18 carries little weight for present purposes.

19 Fifth, the court finds that Mr. Odegaard will suffer prejudice if the court denies his
20 motion. Prejudice to the movant is not one of the four *Pioneer-Briones* factors, but it is
21 an appropriate consideration in this case. Public policy favors disposition of cases on
22 their merits, and Mr. Odegaard has an interest in having the opportunity to present his

1 claims and having the court review the merits of those claims. In its prior order, the court
2 dismissed Mr. Odegaard's case for failure to prosecute without considering the merits of
3 Mr. Odegaard's claims. Absent relief, therefore, Mr. Odegaard will suffer prejudice by
4 not having the opportunity to have his claims considered on the merits.

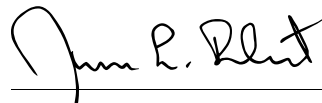
5 On balance, the equities of this case require the court to grant Mr. Odegaard's
6 motion pursuant to Rule 60(b)(1) on the ground of excusable neglect. Likewise, to the
7 extent this motion is properly construed as brought under Rule 60(b)(6), the court
8 concludes that Mr. Odegaard has shown sufficient reason to justify relief, as discussed
9 above.

10 In reaching this decision, the court recognizes the burden it places on VCA
11 Animal Hospital and acknowledges the professionalism that counsel for VCA Animal
12 Hospital has demonstrated throughout the course of this action. The court forewarns Mr.
13 Odegaard that future, unwarranted delays will not be tolerated, that he must hold himself
14 to a respectful standard of conduct in his interactions with counsel for VCA Animal
15 Hospital, and that the court will not postpone ruling on motions if Mr. Odegaard fails to
16 comply with appropriate deadlines absent a specific showing of good cause.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS Mr. Odegaard's motion pursuant to Rule 60(b)(1) and VACATES its order and judgment dismissing this action (Dkt. ## 26, 28). The parties shall meet and confer and submit a joint status report within 15 days of the entry of this order.

Dated this 10th day of May, 2010.

A handwritten signature in black ink, appearing to read "James L. Robart", written over a horizontal line.

JAMES L. ROBART
United States District Judge